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UNCLAS SECTION 01 OF 02 MANILA 005459

SIPDIS

SENSITIVE

STATE FOR EAP, EAP/MTS, EAP/MLS, AND L/EAP
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SECDEF/OSD/ISA/AP FOR ALLEN

E.O. 12958: N/A

TAGS: [PREL](#) [MARR](#) [ASEC](#) [PHUM](#) [PGOV](#) [KCRM](#) [CASC](#) [RP](#)

SUBJECT: UNEVENTFUL PRELIMINARY HEARING IN SUBIC RAPE CASE

REF: A. STATE 212917

[B](#). MANILA 5371

[C](#). MANILA 5348

[D](#). MANILA 5317

[E](#). MANILA 5300

[F](#). MANILA 5231

[G](#). MANILA 5138

[H](#). COMPACFLT PEARL HARBOR HI 030112Z NOV 05

[I](#). OPREP-3/CTF 76.4/022000Z NOV 05 (NOTAL)

[1](#). (SBU) This is an action request by OOB November 25 -- see para 8.

[2](#). (SBU) Summary. The preliminary hearing in the case of six Marines allegedly involved in the rape of a 22-year old Filipina at the Subic Bay Metropolitan Authority (SBMA) began November 23 at the Olongapo City Prosecutor's office. None of the Marines was required to be physically present, but one attended but did not appear before the prosecutor. The victim also did not attend, but her attorney's motion to file a supplemental affidavit by a material witness prompted the prosecutor to delay submission of the Marines' counter-affidavits until November 29, the next hearing date. The scene outside the hearing was largely uneventful, with Olongapo and Philippine National Police (PNP) out in force to control any demonstrations. Separately, Department of Foreign Affairs (DFA) Assistant Secretary for American Affairs Abadilla suggested to CDA November 23 that, while he understood US concerns outlined in ref a diplomatic note, it might prove more beneficial if the Marines could provide copies of their identification, so as not to give the lawyer for the complainant the pretext to claim that the USG was not cooperating in the case. End Summary.

[3](#). (U) The preliminary hearing on the alleged rape of a 22-year old Filipina by six Marines took place at the Olongapo City Prosecutor's office on November 23. The next hearing date is scheduled for November 29. The complainant did not attend. The prosecutor did not require the presence of the six Marines at the hearing, but LCPL Albert Lara, on the advice of his attorney, was present but did not appear before the prosecutor. ACS Chief and USMC attorney observed the hearing, as did representatives of the Philippine Visiting Forces Agreement Commission.

[4](#). (U) The complainant's attorney's motion to file a supplemental affidavit by a material witness prompted the prosecutor to delay submission of the Marines' counter-affidavits until November 29. The prosecutor also took under consideration a motion by the respondents to confront witnesses in the case. The respondents' attorneys asked for and were provided a transcript of the November 12 radio interview by Vice President Noli De Castro of the driver of the Marines' vehicle, in which the driver claimed his initial statement had been coerced by SBMA security officers.

[5](#). (U) The largely uneventful hearing was covered by a packed crowd of an estimated 60 foreign and local journalists, and was carried live on the domestic all-news channel ANC. The leftist women's organization Gabriella conducted a peaceful demonstration outside the Prosecutor's office, near a small, pro-American counter-demonstration. Approximately 300 Olongapo City police with reinforcements from PNP Region III were on hand to ensure order.

[6](#). (U) In a statement to the press following the hearing, Embassy spokesman stressed that, while physically not all present in the court room, the six Marines remained in the Philippines in the custody of the US. He stated that the USG continued to abide by the precepts of the Visiting Forces Agreement (VFA) to ensure the case was handled fairly and justice done. Given the principle under both the Philippine and US justice systems that an accused was innocent until proven guilty, the USG hoped for a fair and impartial process in this case.

[7](#). (SBU) Separately, CDA delivered ref a oral points and provided a copy of ref a diplomatic note on November 23 to DFA Assistant Secretary of American Affairs Abadilla.

Abadilla requested that the USG reconsider its position on the military identifications, so as not to give the complainant's lawyers the pretext to claim that the USG was not cooperating in the case.

18. (SBU) Comment and Action request: Given the improved atmosphere of cooperation in the case, Embassy recommends complying with the DFA informal request for the reason A/S Abadilla outlined, unless there are strong legal grounds not to do so. We might rely on Article 3 of the VFA, which requires US servicemen produce identification to Philippine authorities on entry and exit. Please advise by OOB Manila time November 25.

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Jones